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In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 320

JERROLD ORLAND CONAWAY AND LOUIS J. RITACCO
Petitioners

vs.

STATE OF MINNESOTA
Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT, STATE OF MINNESOTA

ERWIN ALLEN GOLDSTEIN
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Minneapolis 2, Minnesota
Counsel for Petitioners

Hayward-Court Brief Ptg. Co., Mpls. 15, Minn.

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vs.

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Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT, STATE OF MINNESOTA

Petitioners pray that a writ of certiorari issue to review the judgment of the Supreme Court, State of Minnesota, entered in the above entitled case on May 1, 1963 (App. p. 17).[1]

CITATION TO OPINIONS BELOW

There is no opinion of the Minnesota Supreme Court. That Court ordered, on May 1, 1963, that its order to show cause why a writ of prohibition should not issue to the Hennepin County District Court be discharged (App. p. 17).

[1] An Appendix separately presented includes material portions of the certified record. The certified record consists of the following: (1) Petition to Minnesota Supreme Court for Writ of Prohibition; (2) Order to Show Cause why that writ should not issue; (3) Order discharging the Order to Show Cause.

JURISDICTION

The order of the Supreme Court for the State of Minnesota finally disposing of petitioners' petition for a writ of prohibition to the Hennepin County District Court was entered on May 1, 1963. The jurisdiction of this Court is invoked under *28 U.S.C.*, Section 1257 (3).

QUESTIONS PRESENTED

1. Whether an arrest made on a Governor's extradition warrant issued without probable cause violates the Due Process clause, Fourteenth Amendment.

2. Whether an accused is denied Due Process by being required to stand trial after an arrest made in violation of the Due Process clause, Fourteenth Amendment.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Texts of the following constitutional and statutory provisions are set forth in the Appendix separately presented:

Amendment XIV, *Constitution of the United States;*
Amendment IV, *Constitution of the United States;*
Article IV, Section 2, Clause 2, *Constitution of the United States;*
18 United States Code, Section 3182;
Purdon's Pennsylvania Statutes Annotated, Section 191.03;
Minnesota Statutes 1961, Section 628.31;
Minnesota Statutes 1961, Section 629.42;
Minnesota Statutes 1961, Section 629.50.

STATEMENT

Petitioners were arrested in Harrisburg, Pennsylvania, on January 3, 1963, under extradition warrants issued by the Governor of Pennsylvania upon the requisition of the Governor of Minnesota in which petitioners were charged with being fugitives from Minnesota charged with grand larceny in the first degree (App. pp. 4 and 11-12).[2]

The instruments in the extradition requisition to the Governor of Pennsylvania which purported to establish that petitioners had committed an offense in Minnesota were:

1. Complaint made by William L. Mahnke, December 10, 1962, in Minneapolis, Minnesota, Municipal Court (App. pp. 12-14).

2. Affidavit as to Facts and Circumstances When No Indictment Has Been Found, made by William L. Mahnke, dated December 14, 1962 (App. pp. 14-15).[3]

The Affidavit as to Facts and Circumstances When No Indictment Has Been Found is made by Mahnke on information and belief and the basis for and sources of the information and belief are not set out (App. pp. 14-15). No sources for the information in the Complaint made four days earlier by Mahnke are set out (App. pp. 12-14).

Petitioners were held in Pennsylvania under the extradition warrants until Friday, January 25, 1963, when petitioners, after a hearing on their petition for a writ of habeas corpus in the Court of Common Pleas, Dauphin County, Pennsylvania, were ordered by the Court to be returned to Minnesota under the extradition warrants (App. p. 5). No

[2] Only Conaway's extradition warrant is set out. Ritacco's is identical.

[3] Only the Affidavit as to Facts and Circumstances When No Indictment Has Been Found as to Ritacco is set out. Except for his name, Conaway's is identical.

stay was provided for in that order and on Saturday, January 26, 1963, petitioners were informed that their return to Minnesota under the warrants would commence on that date (App. p. 5). On Sunday, January 27, 1963, officers of the Minneapolis, Minnesota, police department took petitioners to Minnesota, and on January 29, 1963, petitioners, in custody, arrived in Minnesota and were taken before the Minneapolis Municipal Court for proceedings under the complaint charging them with grand larceny in the first degree (App. p. 5 and pp. 12-13).

In Minneapolis Municipal Court on January 29, 1963, petitioners objected to the jurisdiction of the Municipal Court and moved to dismiss all proceedings under the complaint upon the ground that their arrest under the extradition warrants was a denial of due process because the warrants issued without probable cause, in violation of Amendments IV and XIV, Constitution of the United States. (App. p. 7). Petitioners' objections were overruled, their motions denied, and they were bound over to District Court after a preliminary examination in Municipal Court on the complaint (App. p. 7). Petitioners were enlarged on bail by the Municipal Court (App. p. 7).

Petitioners objected to the jurisdiction of the Hennepin County District Court in their first appearance there on February 25, 1963, and before their arraignment upon an Information charging them with the same offense as set out in the complaint (App. pp. 7-8). Petitioners at that time moved to dismiss the Information and all proceedings in District Court upon the ground that the Court lacked jurisdiction because the jurisdiction of the District Court depended upon the filing of an Information which could only occur after petitioners' presence within Minnesota had been accomplished and that the presence was obtained in

violation of Amendments IV and XIV, *Constitution of the United States*, and *Title 18, United States Code*. Section 3182 (App. pp. 7-8 and pp. 1-2), because the extradition warrants under which petitioners were returned to Minnesota were issued without probable cause. The District Court denied the motions on March 28, 1963, and ordered petitioners to stand trial upon the Information (App. p. 8).

Petitioners then petitioned the Supreme Court of Minnesota for a writ of prohibition. The ground asserted was that the District Court was either without jurisdiction or was exceeding its jurisdiction because its power to act was the result of a denial of petitioners' rights under the due process clause (App. p. 6). The Minnesota Supreme Court refused to issue the writ of prohibition (App. p. 17).

REASONS FOR GRANTING THE WRIT

1. An order denying an application for a writ of prohibition by the highest court of a state is a final judgment within *18 U.S.C.*, Section 1257, *Michigan Central v. Mix*, 278 U. S. 492.

2. There should be a determination that there is a sanction for an arrest which violates due process.

The Fourteenth Amendment requires that probable cause be established for a search. The sanction for its enforcement is the exclusion of evidence obtained in the unlawful search. *Mapp v. Ohio*, 367 U. S. 643. If the Fourteenth Amendment affords a sanction for an unlawful search, it must afford a sanction for an unlawful arrest.

That sanction should be a denial of the power of the Court to proceed in a cause which was commenced by an unlawful arrest. But for the unlawful arrest, the Hennepin County District Court could not have acquired power to proceed against petitioners.

Petitioners are being proceeded against in Hennepin County District Court as a result of their return to Minnesota under the extradition warrants.

If petitioners had not been returned under those warrants, the Minnesota District Court could not have acquired jurisdiction, because no Information could have been filed until petitioners had been accorded a preliminary examination in municipal court, for which their presence was required. *Minnesota Statutes 1961*, Sections 628.31, 629.42, 629.50 (App. pp. 3-5).

Petitioners' arrests under the extradition warrants were unlawful because no probable cause had been established for their issuance. Mahnke's Complaint and Affidavit as to Facts and Circumstances When No Indictment Has Been Found (App. pp. 12-15) do not establish probable cause because they were made on information and belief. No sources nor basis for information and belief were set forth. Accordingly, the requirements of the Fourth Amendment for a lawful arrest were not met. *Giordenello v. U. S.*, 357 U. S. 480.

This Court's decision in *Frisbie v. Collins*, 342 U. S. 519, should not be controlling here. Since that case was decided, this Court has determined that there is a sanction for enforcement in the States of the requirements of the Fourth Amendment, *Mapp v. Ohio, supra*, and has announced Fourth Amendment standards for a lawful arrest in *Giordenello v. U. S., supra*. If *Frisbie v. Collins, supra*, were to be followed now, its effect would give rise to the following anomaly: There is a remedy—exclusion of evidence—for an invasion of privacy resulting from an unlawful search; there is no remedy for a deprivation of liberty resulting from an unlawful arrest. Petitioners submit

that an arrest without probable cause is a greater invasion of privacy and liberty than a search without probable cause. There should be a remedy for the invasion.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

ERWIN ALLEN GOLDSTEIN
1260 Northwestern Bank Building
Minneapolis 2, Minnesota
Counsel for Petitioners

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APPENDIX

to Petition for Writ of Certiorari to the Supreme Court, State of Minnesota

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment XIV, Constitution of the United States

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Amendment IV, Constitution of the United States

The right of the people to be secure in their persons,

houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Article IV, Section 2, Clause 2, Constitution of the United States

A person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another state, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

18 United States Code, Section 3182

Whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State, District or Territory to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged has fled, the executive authority of the State, District or Territory to which such person has fled shall cause him to be arrested and secured, and notify the executive authority making such demand, or the agent of such authority appointed to receive the fugitive, and shall cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within thirty days from the time of the arrest, the prisoner may be discharged.

Purdon's Pennsylvania Statutes Annotated, Section 191.03

No demand for the extradition of a person charged with crime in another state shall be recognized by the

governor unless in writing alleging, except in cases arising under Section 191.06, that the accused was present in the demanding state at the time of the commission of the alleged crime, and that thereafter he fled from the state, and accompanied by a copy of an indictment found or by information supported by affidavit in the state having jurisdiction of the crime, or by a copy of an affidavit made before a magistrate there, together with a copy of any warrant which was issued thereupon; or by a copy of a judgment of conviction or of a sentence imposed in execution thereof * * *. The indictment, information, or affidavit made before the magistrate must substantially charge the person demanded with having committed a crime under the law of that state; and the copy of the indictment, information, affidavit, judgment of conviction or sentence must be authenticated by the executive authority making the demand.

Minnesota Statutes, 1961, Section 628.31

No information shall be filed against any person for any offense until such person shall have had a preliminary examination as provided by la before a justice of the peace or other examining magistrate or office, unless such person shall waive his right to such preliminary examination.

Minnesota Statutes, 1961, Section 629.42.

Upon complaint made to any such magistrate that a criminal offense has been committed, he shall examine, on oath, the complainant and any witnesses who shall appear before him, reduce the complaint to writing, and cause it to be subscribed by the complainant; and if it shall appear that such offense has been committed, he shall issue a warrant, reciting the substance of the complaint, and requiring the officer a warrant, reciting the substance of the complaint, and requiring the officer to whom it is directed to forthwith bring the accused before him, or some other

court or magistrate of the county, to be dealt with according to law, and in such warrant require him to summon the witnesses therein named to appear and give evidence upon examination.

Minnesota Statutes, 1961, Section 629.50

The magistrate before whom any person shall be brought upon a charge of having committed an offense shall, as soon as may be, examine the complaint and the witnesses in support of the prosecution, on oath, in the presence of the party charged * * *.

IN THE SUPREME COURT OF MINNESOTA

STATE OF MINNESOTA

vs.

JERROLD O. CONAWAY AND LOUIS J. RITACCO,
Defendants.

PETITION FOR WRIT OF PROHIBITION

The State of Minnesota ex rel. Jerrold O. Conaway and Louis J. Ritacco, relators and petitioners herein, to the District Court in and for Hennepin County, State of Minnesota:

Jerrold O. Conaway and Louis J. Ritacco, hereinafter referred to as petitioners, respectfully petition and show the Court as follows:

I.

Petitioners are charged in Hennepin County District Court in an Information filed March 21, 1963, charging them with grand larceny in the first degree and have been ordered by the Hennepin County District Court to stand trial in that Court upon said Information. A true and cor-

rect copy of that Information is hereto attached and marked Exhibit A.

II.

The Information was filed after and Petitioners are being prosecuted thereon as a result of their return from the Commonwealth of Pennsylvania to the State of Minnesota by officers of the Minneapolis Police Department under and pursuant to extradition warrants issued by the Governor of Pennsylvania. True and correct copies of those warrants are hereto attached and marked Exhibit B (Conaway) and C (Ritacco).

III.

The extradition warrants issued solely upon the extradition requisitions of the Governor of Minnesota addressed to the Governor of the Commonwealth of Pennslyvania. True and correct copies of all matters and instruments in said requisitions are hereto attached and marked Exhibit D (Conaway) and E (Ritacco).

On January 3, 1963, the extradition warrants, Exhibits B and C, were executed and Petitioners were held thereunder in Dauphin County Prison, Pennsylvania, until Friday, January 25, 1963, when petitioners, after a hearing on their petition for a writ of habeas corpus in the Court of Common Pleas, Dauphin County, Pennsylvania, were ordered by that Court to be returned under said extradition warrants to Minnesota. No stay was provided for in said order. On Saturday, January 26, 1963, petitioners were informed that their return to Minnesota under said warrants would commence on that date. On Sunday, January 27, 1963, relators commenced their return to Minnesota under said extradition warrants in the custody of officers of the Minneapolis Police Department. On January 29, 1963, relators arrived in Minnesota and were taken before the Minneapolis Municipal Court on that date.

V.

The Hennepin County District Court lacks jurisdiction and is exceeding its jurisdiction in this matter by reason of the following: The power of the Hennepin County District Court to act depends upon and results from the filing of the Information, Exhibit A, which could not have been accomplished without the presence of petitioners within the territorial limits of the State of Minnesota and that presence was unconstitutionally and illegally accomplished, in violation of *Amendments XIV and IV; Constitution of the United States*, and in violation of *Section 3182, Title 18 United States Code*. Petitioners' presence before the Court was illegally accomplished because the extradition warrants, Exhibits B and C, were illegally issued in that the requisition of the Governor of Minnesota, Exhibits D and E, did not include that affidavit or showing required by *Title 18, United States Code, Section 3182*, and because there was no showing of probable cause as required by *Amendments XIV and IV, Constitution of the United States*, made to the Governor of Pennslyvania in said extradition requisitions and because the extradition warrants issued without probable cause.

VI.

The Hennepin County District Court in requiring petitioners to stand trial and in entertaining this prosecution is without jurisdiction and is exceeding its jurisdiction because it is depriving petitioners of Due Process of Law as required by Amendment XIV, Constitution of the United States. The petitioners are being denied Due Process because, in being required to stand trial and be the subject of this procedure in Minnesota, they are denied those rights conferred by the Fourteenth and Fourth Amendments, Constitution of the United States as announced in the decisions of the Supreme Court of the United States in *Mapp v. Ohio (1961), 367 U. S. 643, 81 S. Ct. 1684, 6 L. Ed. 2d 1081*; and *Giordenello v. United States, (1957), 357 U. S. 480*,

78 S. Ct. 1245. In *Giordenello vs. U. S., supra,* the Supreme Court of the United States held that a complaint made in support of a warrant of arrest which consists of a mere statement of the charge or accusation does not establish that probable cause required by the Fourth Amendment, and that the provisions of the Fourth Amendment apply to warrants for arrest. In *Mapp v. Ohio, supra,* the Supreme Court of the United States announced the rule and principle that the provisions of the Fourth Amendment are applicable to the States and are included within the Due Process provisions of the Fourteenth Amendment, Constitution of the United States.

VII.

The Complaint and Affidavit as to Facts and Circumstances included within the requisitions, Exhibits D and E, are insufficient for establishing probable cause because they are made only upon information and belief without setting forth the nature or source of that information and because they constitute a mere accusation and do not satisfy the requirements of *Giordenello v. United States, supra.*

VIII.

Petitioners objected to the jurisdiction of the Minneapolis Municipal Court on the occasion of their initial appearance there on January 29, 1963, upon the grounds asserted herein and moved to dismiss all proceedings therein. Their objections were overruled and the motions denied, and petitioners on February 20, 1963, were ordered, after a preliminary examination, bound over to District Court. Petitioners are now enlarged upon bail.

IX.

Petitioners objected to the jurisdiction of the Hennepin County District Court on the occasion of their initial appearance there on February 25, 1963, and before their arraignment upon the Information and moved to dismiss the

Information and all proceedings thereunder, upon the grounds asserted herein. Their objections were overruled and their motions denied on March 28, 1963, by Honorable William D. Gunn, District Judge.

X.

At the hearing on petitioners' motion to set aside the Information and to dismiss before Hon. William D. Gunn on March 21, 1963, the Hennepin County Attorney through an assistant in opposing petitioners' motions stated to the Court in substance that the Court could assume the truth of petitioners' contentions before that Court that the extradition warrants were illegally issued and that they were issued and that petitioners were arrested thereunder and taken from Pennsylvania to Minnesota in contravention of *Amendments XIV and IV, Constitution of the United States*, and *Section 3182, Title 18, United States Code*, but stated in substance that the Hennepin County District Court had jurisdiction irrespective of the manner in which petitioners had been brought before it.

XI.

If petitioners are required to stand trial in the prosecution now pending they will be denied the protection of the Fourth and Fourteenth Amendments because they will have been denied the protection of any sanction for the enforcement of their rights under those Amendments and the violation of their constitutional rights will have been used as the means for proceeding against them.

XII.

Except for the Writ of Prohibition which they here seek, petitioners have no other adequate remedy to prevent their being required to stand trial, be the subject of prosecution under said Information, and to be exposed to the purported exercise of the jurisdiction of the Hennepin County District Court, all of which results from the unconstitutional and

illegal means used in accomplishing and obtaining their presence before the Hennepin County District Court.

Wherefore, petitioners pray that a Writ of Prohibition issue from this Court directed to the Hennepin County District Court commanding it to refrain from any further proceedings in the matter of the trial of petitioners until the further order of this Court and to show cause at such time to be fixed by the Court why it should not be restrained from any further proceedings under and pursuant to the Information under which petitioners are charged.

/s/ Jerrold O. Conaway
/s/ Louis J. Ritacco

VERIFICATION

State of Minnesota

ss.

County of Hennepin

Jerrold O. Conaway and Louis J. Ritacco, being first duly sworn on oath, depose and say that they are the relators and petitioners in the foregoing petition; that each of them has read the foregoing petition and that the matters therein stated are true of their own knowledge.

/s/ Jerrold O. Conaway
/s/ Louis J. Ritacco

Subscribed and sworn to before me this 9th day of April, 1963.

/s/ Keith D. Kennedy,
Notary Public,
Hennepin County, Minnesota.

SEAL

My commission expires August 8, 1968.

EXHIBIT A

The District Court for the Fourth Judicial District
State of Minnesota and County of Hennepin

The State of Minnesota,

Plaintiff,

vs.

Louis J. Ritacco and Jerrold Orland Conaway

Defendants.

Information

I, George M. Scott, County Attorney for said Hennepin County, Minnesota, under my oath of office as such prosecuting officer, hereby inform the above named Court that Louis J. Ritacco and Jerrold Orland Conaway, and each of them, committed the crime of Grand Larceny in the first degree (Minnesota Statutes 1961, Sections 622.01 and 622.05) as follows, to-wit:

The said Louis J. Ritacco and Jerrold Orland Conaway, and each of them on or about the 25th day of November A.D. 1962, at the City of Minneapolis in said Hennepin County, Minnesota, each aiding and abetting the other, and being concerned in the commission of the crime hereinafter alleged, then and there being, did wilfully, unlawfully, wrongfully, knowingly and felonious in the night time of said day, take, steal and carry away from that certain dwelling house known, designated and described as number 5228-16th Avenue South, in said City of Minneapolis, County and State aforesaid the following coins:

1800 rolls of uncirculated pennies

800 silver dollars circulated

1000 Indian Head pennies

8 rolls of Liberty Head nickels

165 proof sets

8 $20. Gold Pieces

of the total value of more than Twenty-five Dollars ($25.-00), a more particular description of said property being to me unknown, said dwelling house and property therein contained described as aforesaid, being then and there the property of, in the lawful possession of and belonging to Roger Walter Lanns, with intent then and there had and entertained by them, the said Louis J. Ritacco and Jerrold Orland Conaway, and each of them, to deprive the said Roger Walter Lanns, the true owner of said property, of his said property, and to appropriate the same to the use of them, the said Louis J. Ritacco and Jerrold Orland Conaway, and each of them, contrary to the statute in such case made and provided, and against the peace and dignity of the State of Minnesota.

Dated at the City of Minneapolis, in said Hennepin County, this 20th day of February, A.D. 1963.

George M. Scott, County Attorney.

Names of Witnesses Examined before the County Attorney:
William L. Mahnke

EXHIBIT B

In the Name and by Authority of the
Commonwealth of Pennsylvania

Governor's Warrant

To any Sheriff, Coroner, or any other Peace Officer in the Commonwealth of Pennsylvania: Greeting:

Whereas, it has been represented to me by the Governor of the State of Minnesota, that Jerold Orland Conaway, stands charged with the crime of Grand Larceny in the First Degree, and is a fugitive from the justice of said State and has taken refuge in the State of Pennsylvania (or com-

mitted an act intentionally resulting in said crime in said State and is now in the State of Pennsylvania); and the said Governor of said State having, in pursuance of the Constitution and Laws of the United States, requested me that I shall cause his arrest and delivery to William D. Hokans, who is duly authorized to receive him unto his custody and convey him back to the said State.

Therefore, you are hereby commanded, in the name of the Commonwealth of Pennsylvania, immediately to take into your custody under this warrant the said Jerold Orland Conaway, and to command the aid of all peace officers in the execution hereof, and to deliver him to the above-named agent to be by him conveyed to said State, there to be dealth with according to law.

In witness whereof, I have hereunto signed my name and affixed the Great Seal of the State of Pennsylvania at the Capitol, in the City of Harrisburg, this twenty-eighth day of December in the year of our Lord one thousand nine hundred and sixty-two.

By the Governor:

David L. Lawrence
Governor.

E. James Timarchi, Jr.,
Secretary of the Commonwealth

EXHIBIT I

Municipal Court, City of Minneapolis

State of Minnesota
ss.
County of Hennepin

Complaint

William L. Mahnke being duly sworn makes complaint to the above named Court, and says that on or about the

25th day of November A.D. 1962, within the corporate limits of the City of Minneapolis, Hennepin County, Minnesota, Louis J. Ritacco and Jerold Orland Conaway, and each of them, each aiding and abetting the other, and being concerned in the commission of the crime hereinafter alleged, then and there being, did wilfully, unlawfully, wrongfully, knowingly and feloniously in the night time of said day, take, steal and carry away from that certain dwelling house known designated and described as number 5228 16th Avenue South, in said City of Minneapolis, County and State aforesaid, the following coins:

1800 rolls of uncirculated pennies

800 Silver Dollars circulated

1000 Indian Head pennies

8 rolls of Liberty Head nickels

169 proof sets

8 $20. Gold Pieces

of the total value of more than Twenty-five Dollars ($25.-00); a more particular description of said property being to the complaint unknown, said dwelling house and property therein contained described as aforesaid, being then and there the property of, in the lawful possession of and belonging to Roger Walter Lanns, with intent then and there had and entertained by them, the said Louis J. Ritacco and Jerold Orland Conaway, and each of them, to deprove the said Roger Walter Lanns, the true owner of said property, of his said property, and to appropriate the same to the use of them, the said Louis J. Ritacco and Jerold Orland Conaway, and each of them, contrary to the Stat-

ute in such case made and provided and against the peace and dignity of the State of Minnesota.

Wherefore, complaint prays that said offender may be arrested and dealt with according to law.

William L. Mahnke

Sworn to and subscribed and complained of before me this 10th day of December A.D. 1962.

Bruce C. Stone
Judge of the Municipal Court.

Section 622.01 and 622.05
Charge Grand Larceny in the First Degree
Issued by Phillip John Bloedel-ds
Assistant County Attorney
Recom. bail $5,000 each

AFFIDAVIT AS TO FACTS AND CIRCUMSTANCES WHEN NO INDICTMENT HAS BEEN FOUND

(See Rule 1 (4) of General Instructions on cover.)

State of Minnesota,
ss.
County of Hennepin.

On this —day of December, 1962, before me, a Judge personally appeared William L. Mahnke, who being before me duly sworn did say: that the circumstances and facts showing the commission of the crime charged in the complaint against Louis Joseph Ritacco are as follows:

Your affiant states upon information and belief, that on or about the 25th day of November, 1962, within the corporate limits of the City of Minneapolis, County of Hennepin, State of Minnesota, Louis J. Ritacco and Jerold Orland Conaway, aiding and abetting the other, the two defendants named in the complaint herein, did knowingly and feloniously, in the night time of said day, take, steal and

carry away from a dwelling house, designated as 5228 16th Avenue South, in said city, a valuable coin collection whose value is estimated at more than Sixty Thousand Dollars ($60,000.00), consisting in part of several thousand uncirculated pennies, a thousand Indianhead pennies, $20.00 gold pieces, silver dollars, and other coins, all in distinctive display cases and all belonging to Roger Walter Lanns and in his lawful possession at the above-described address; that the said Louis Joseph Ritacco and Jerold Orland Conaway did take, steal and carry away the aforesaid personal property with the intent to deprive the true owner thereof and to appropriate the same to their own use.

Attached hereto is a photograph of said Louis Joseph Ritacco, which photograph is hereby identified by your affiant as a true picture of said Louis Joseph Ritacco.

William L. Mahnke.

Subscribed and sworn to before me this 14th day of December, 1962.

/s/ BRUCE C. STONE, Judge.

(Seal of Office)

STATE OF MINNESOTA
IN SUPREME COURT

State of Minnesota,

Plaintiff,

vs.

JERROLD ORLAND CONAWAY and LOUIS J. RITACCO,

Defendants.

ORDER TO SHOW CAUSE

Whereas, the defendants in the above entitled cause have applied to the court for a writ of prohibition commanding the trial court wherein said cause is pending to refrain from proceeding with the trial of said defendants;

It is hereby ordered, that the State of Minnesota and the court wherein said matter is now pending show cause on April 18, 1963, at 10 o'clock, A.M., why such writ of prohibition should not be issued.

Dated April 10, 1963.

By the Court:

OSCAR R. KNUTSON,
Chief Justice.

STATE OF MINNESOTA
OFFICE OF THE CLERK OF SUPREME COURT

St. Paul, Minn.

May 1, 1963

STATE OF MINNESOTA,

Respondent.

vs.

JERROLD ORLAND CONAWAY and LOUIS J. RITACCO,

Relators.

No. 39074

Sir: You will please take notice that on this date the following order was entered in the above entitled cause:

Upon the briefs, files, records and proceedings.

It is ordered that the order to show cause why a writ of prohibition should not issue out of this Court to the District Court within and for the County of Hennepin be and hereby is discharged.

By the Court:

MAE SHERMAN,
Clerk Supreme Court.

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FILED
AUG 23 1963

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 320

JERROLD ORLAND CONAWAY
and LOUIS J. RITACCO

Petitioners

vs.

STATE OF MINNESOTA

Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT, STATE OF MINNESOTA

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR CERTIORARI

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CITATIONS TO OPINIONS BELOW

The matter is correctly stated in the Petition.

JURISDICTION

The jurisdictional requisites are adequately set forth in the Petition.

QUESTION PRESENTED

Whether, after Petitioners' return to Minnesota from Pennsylvania under extradition warrants, an alleged irregularity in a supporting paper to the extradition warrants will permit a collateral attack on the power of the trial court in Minnesota to compel Petitioners to stand trial for the crime for which they were returned.

STATUTES INVOLVED

The pertinent statutes are Purdon's Pennsylvania Statutes Annotated, Section 131.03, set forth in Petitioners' Appendix at pages 2 and 3, and Minnesota Statutes, 1961, Section 629.42, set forth in Petitioners' Appendix at pages 3 and 4.

STATEMENT

Petitioners are accused of stealing a coin collection valued at $60,000 from a home in Minneapolis, Minnesota, in November, 1962. (App. 12-14, 15). As yet, there has been no trial. In connection with this charge, the Governor of Minnesota issued a requisition warrant for Petitioners' extradition from Pennsylvania, where they were then, and the Governor of Pennsylvania honored this request on December 28, 1962, when he issued a rendition warrant. (App. 11-12). On January 3, 1963, arrest under the rendition warrant occurred in Harrisburg, Pennsylvania (App. 5). While held under the extradition war-

rant. Petitioners challenged the extradition papers by filing a petition in habeas corpus and got a hearing on the matter on January 24. On January 25, the hearing judge ruled that Petitioners' attack was not well grounded, and ordered their return to Minnesota (App. 5). Petitioners' counsel requested no stay to appeal the hearing court's order, and two days later, on January 27, officers from Minnesota took Petitioners into custody and started their return to Minnesota. (App. 5). On the first day of Petitioners' return to Minneapolis, Minnesota, on January 29, they again challenged the extradition papers, this time by Motion in the Minneapolis Municipal Court. (App. 7). Against the Petitioners' attack that the Municipal Court lacked jurisdiction because an affidavit contained in extradition papers was illegal, the court found against them. (App. 7). On February 20, following a hearing to determine whether probable cause existed for believing that Petitioners committed the coin theft occurring in November, 1962, the court ordered Petitioners bound over to Hennepin County District Court to stand trial for the crime. (App. 7). In District Court, Petitioners again challenged the Court's jurisdiction by again claiming that the extradition papers denied them constitutional rights because a supporting affidavit in the extradition papers was based on information and belief. (App. 7-8). The District Court decided that no constitutional right of the petitioners had been violated and denied their motion on March 28, 1963. (App. 8).

On April 9, Petitioners filed a petition for a writ of prohibition with the Supreme Court of Minnesota asserting that the District Court lacked jurisdiction for the same reason that they had alleged in the District Court below. (App. 4-9). The Supreme Court of Minnesota heard oral arguments on the case on April 18, 1963. (App. 16). Following the receipt of briefs

and the hearing, the Minnesota Supreme Court, on May 1, 1963, concluded that Petitioners' constitutional rights had not been violated, and refused to issue the requested writ of prohibition. (App. 17).

ARGUMENT

Petitioners apparently contend that their arrest in Pennsylvania under extradition warrants were unlawful—not because the extradition warrants were improperly issued under Purdon's Pennsylvania Statutes Annotated, Section 191.03 (App. 2-3), nor because the supporting criminal complaint (App. 12-14) did not comply with Minnesota Statutes, Section 629.42 (App. 3-4), but because, even so, probable cause for the arrests was somehow lacking (Pet. 6). These illegal arrests in Pennsylvania, they assert, forever deprive the trial court in Minnesota of jurisdiction to try them for the crime for which they were returned (Pet. 5).

Outside the bare assertion that the criminal complaint (App. 12-14) did not establish probable cause because it was based on information and belief (Pet. 6), nothing in the case justifies this conclusion. Four courts below have specifically rejected this assertion: (1) Court of Common Pleas, Dauphin County, Pennsylvania; (2) Municipal Court, Minneapolis, Minnesota; (3) District Court, Hennepin County, Minnesota; and (4) Supreme Court, State of Minnesota. Moreover, no complaint and warrant could have been issued in Minnesota unless a judge first determined that probable cause, in fact, existed. Minnesota Statutes, Section 629.42 (App. 3-4), requires that a magistrate must examine the complainant and any witnesses under oath first and then, "if it shall appear that such offense

has been committed, he shall issue a warrant . . . requiring the officer to whom it is directed to forthwith bring the accused before him . . ." This was done here. No suggestion exists that such an examination and determination were not made. Petitioners simply assert, without more, that their arrest in Pennsylvania was not based on probable cause because the extradition warrant was supported by the criminal complaint issued in Minnesota. Petitioners do not suggest that this complaint otherwise fails to qualify as an affidavit in extradition under Purdon's Pennsylvania Statutes Annotated, Section 191.03 (App. 2-3). They seek instead to link it with the "Affidavit as to Facts and Circumstances" (App. 14-15), which admittedly is based upon information and belief, and treat them as one. (Pet. 6). That affidavit's sole function was to place a more explicit value, i.e., $60,000, upon the stolen coins than the complaint had previously done.

From the bare assertion that the criminal complaint did not establish probable cause because based on information and belief, Petitioners next ask that this Court overturn its previous decision in *Frisbie v. Collins*, 342 U.S. 519. (Pet. 6). The policy there announced was:

> "This Court has never departed from the rule announced in *Ker v. Illinois*, 119 U.S. 436, 444, that the power of a court to try a person for crime is not impaired by the fact that he had been brought within the court's jurisdiction by reason of a 'forcible abduction.' No persuasive reasons are now presented to justify overruling this line of cases. They rest on the sound basis that due process of law is satisfied when one present in court is convicted of crime after having been fairly apprised of the charges against him and a fair trial in accordance with constitutional procedural safeguards. There is nothing in the Constitu-

tion that requires a court to permit a guilty person rightfully convicted to escape justice because he was brought to trial against his will." *Id.* at 522.

It is clear, then, that without the strained semantics used by the Petitioners to convert an arrest under an extradition warrant into a constitutional violation, no important question of Federal law requiring decision by this Court exists.

CONCLUSION

For the foregoing reasons we respectfully submit that the petition for a writ of certiorari should be denied.

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